

Summary: Qualification; Compensation/Leave-Annual Leave; Ruling Date: June 5, 2002; Ruling #2002-077; Agency; Department of Corrections; Outcome: not qualified.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

QUALIFICATION RULING OF DIRECTOR

In the matter of Department of Corrections
Ruling Number 2002-077
June 5, 2002

The grievant has requested a ruling on whether his January 22, 2002 grievance with the Department of Corrections (DOC) qualifies for a hearing. The grievant claims that the institutional vacation leave policy was unfairly applied resulting in his loss of seniority for vacation selection dates.

FACTS

The grievant is employed as a Corrections Officer. He was originally employed by DOC from May 1, 1985 until August 27, 1997. Subsequently, he left state service for employment in the private sector until his reemployment on November 10, 1998. Upon his return to state service, the provisions of state policy for employees returning to state service were applied to determine his annual leave accrual rate, which resulted in an "adjusted hire date" of July 10, 1986 for leave accrual purposes.¹

Correctional Center operating procedure (Warden's Directive #00-17) specifies that Corrections Officers will compete for their choice of vacation leave based on their seniority, which is defined as the "last date of hire" with DOC.² Until the error was discovered in December 2001, the grievant's vacation seniority date was incorrectly recorded as July 10, 1986, the "adjusted hire date" used for the purposes of determining his annual leave accrual rate under state policy. After the grievant's vacation seniority date was corrected to November 10, 1998, his "last date of hire," his name on the Correctional Center's vacation seniority list changed to a lower position.

¹ See the Department of Human Resource Management (DHRM), Policy 1.55 III(A)(4)(b) (providing a formula for crediting years of prior state service for leave accrual purposes upon a former employee's return to state service).

² Warden's Directive #00-17, September 15, 2000.

DISCUSSION

By statute and under the grievance procedure, management reserves the exclusive right to manage the affairs and operations of state government.³ Thus, all claims relating to issues such as the means, methods, and personnel by which work activities are to be carried out, and the transfer, reassignment, or scheduling of employees within the agency generally do not qualify for hearing, unless the grievant presents evidence raising a sufficient question as to whether discrimination, retaliation, or discipline may have improperly influenced management's decision, or whether state policy may have been misapplied.⁴

In this case, the grievant asserts that his adjusted hire date of July 10, 1986 should continue to be used as his vacation seniority date. The grievant asserts that the Warden's Directive, which sets the last date of hire as determinative for vacation seniority purposes, should not be applied retroactively and should apply only to officers hired subsequent to the policy's September 15, 2000 effective date. To support his claim, the grievant cited DHRM Policy 1.55 as establishing a precedent because under its provisions, he was credited with all periods of prior service in determining his adjusted hire date for annual leave accrual purposes. Therefore, he claims, it was proper that his adjusted hire date also be used as his vacation seniority date.

DHRM Policy 1.55, however, is only applicable to determining compensation issues, including the annual leave accrual rate, of former classified employees who are re-hired. In this case, however, the governing policy is Warden's Directive #00-17, which clearly defines vacation selection seniority as being the "last date of hire" by DOC. Notwithstanding the past use of an erroneous seniority date, management's action to change the date in order to conform to its internal policy did not constitute a misapplication or unfair application of policy. Indeed, the grievant is, in essence, disputing the contents of the policy, not its application. The grievance procedure expressly excludes challenges to the "contents of...personnel policies" from qualification, unless there is some support for a claim of discrimination, retaliation, or discipline.⁵ The grievant asserts no such claim in this instance. Accordingly, this issue does not qualify for hearing.

APPEAL RIGHTS AND OTHER INFORMATION

For information regarding the actions the grievant may take as a result of this ruling, please refer to the enclosed sheet. If the grievant wishes to appeal this determination to the circuit court, the grievant should notify the human resources office, in writing, within five workdays of receipt of this ruling. If the court should qualify this

³ Va. Code § 2.2-3004(B).

⁴ Va. Code § 2.2-3004(A) and (C); Grievance Procedure Manual § 4.1(b) and (c), pages 10-11.

⁵ *Grievance Procedure Manual* § 4.1(c), page 11.

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grievance, within five workdays of receipt of the court's decision, the agency will request the appointment of a hearing officer unless the grievant wishes to conclude the grievance and notifies the agency of that desire.

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